# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 18423 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SARVODAYASEVASHRAMTRUST & 1 - Petitioner(s)**

**Versus**

**STATEOFGUJARAT & 4 - Respondent(s)**

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**Appearance :**

MR MK VAKHARIA for Petitioner(s) : 1 - 2.
MR. P.D.BHATE, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 09/09/2005**

**ORAL JUDGMENT**

1.In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the

Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 13.7.2005 passed in Revision Application No.32/2004 in dismissing the same and confirming the order passed by the Collector, Surendranagar dated 11.9.2004 passed in RRT Revision Application No.51/2002-2003.

2.The dispute is with regard to the entry No. 2928 in respect to the land bearing Survey No.377 admeasuring 38-Acres and 25-Gunthas situated at village Adariyana, Taluka Dasada Dist. Surendranagar. It appears from the record that the land in question was granted by the Collector, Surendrangar in favour of the Trust-Saravodaya Sevashram Trust (petitioner No.1 herein) and the same was a restricted land and was granted to the petitioner No.1-Trust for agriculture purpose. It appears that the petitioner No.2- Kalpeshkumar Gagjibhai Dodiya submitted an application for mutating his name in the revenue record as Vahivatkarta of the petitioner No.1-Trust and vide Entry No.2928 dated 1.5.2002, the name of the said Kalpeshkumar Gagjibhai Dodiya came to be entered into the records of rights. It appears that the Collector, Surendranagar was of the opinion that the said entry and the entry by which the

name of petitioner No.2 was entered into the record of rights in respect of the land in question which was of the ownership of the petitioner No.1-Trust, the said entry was taken under suo-motu revision and the Collector, Surendranagar by his order dated 27.9.2004 set aside entry No.2928 dated 1.5.2002 by holding that the name of the petitioner No.2 could not have been entered into the record of rights as the property was in the name of the Trust, which is registered under the Bombay Registered Trusts Act with the Charity Commissioner. Being aggrieved and dissatisfied with the order passed by the Collector, Surendranagar dated 11.9.2004 passed in RRT Revision Application No.51/2002-2003 the petitioners preferred Revision Application No.32/2004 before the Secretary (Appeals), Revenue Department, State of Gujarat and the Joint Secretary (Appeals), Revenue Department, State of Gujarat by his judgment and order dated 13.7.2005 dismissed the said Revision Application confirming the order passed by the Collector, Surendranagar dated 11.9.2004 passed in RRT Revision Application No.51/20002-2003. Being aggrieved and dissatisfied with the aforesaid two orders in setting aside entry No.2928 which was in favour of the petitioner No.2, the

petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri M.K.Vakharia, learned advocate appearing on behalf of the petitioners has vehemently submitted that the petitioner No.2 was appointed as a Manager/Vahivatkarta of the Trust and therefore his name was mutated in the record of rights only as a Vahivatkarta and as such there was no transfer in favour of the petitioner No.2 and as the name of the petitioner No.2 was entered into the record of rights as a Vahivatkarta of the Trust, it cannot be said that the said entry in any way illegal which was required to be set aside by the Collector, Surendranagar. Therefore, it is requested to allow the present Special Civil Application.

4. It is required to be noted that the land in question was granted to the Trust and the petitioner No.1-Trust is registered under the provisions of the Bombay Public Trust Act and the property of the Trust is also required to be registered with the Charity Commissioner. Under the circumstances, the name of the petitioner No.2 without the petitioner No.2 being appointed as a trustee and without any approval by the Charity Commissioner could not have been entered into

the record of rights. When the property is in the name of the Trust, only the name of the trustee is required to be mentioned in the records of rights. Under the circumstances, the name of the petitioner No.2 was not required to be entered into the records of rights in respect of the land in question which was of the ownership of the petitioner No.1-Trust. Under the circumstances, there is no illegality committed by the Collector, Surendranagar in cancelling Entry No.2928 which was in favour of the petitioner No.2 as in the property owned by the petitioner No.1, the petitioner No.2 has tried to mutate his name as a Vahivatkarta that too without any order passed by the Charity Commissioner and accordingly, the Joint Secretary (Appeals), Revenue Department, State of Gujarat has not committed any error in dismissing the Revision Application and confirming the order passed by the Collector, Surendranagar in cancelling entry No.2928.

5. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly dismissed.

(M.R.SHAH, J.)

kdc.